

# DEPARTMENT OF THE ARMY PERMIT

**Permittee:** Alaska Department of Transportation & Public Facilities

**Permit No.:** POA-2006-597-2, Berners Bay/Lynn Canal

**Issuing Office:** U.S. Army Engineer District, Alaska

**NOTE:** The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

**Project Description:** Permittee shall discharge up to 1,736,000 cubic yards (cy) of dredged and fill material into approximately 110 acres of waters of the United States (U.S.), including forested wetlands, stream channels, deep-water habitat, vegetated shallows, and navigable waters of the U.S., in conjunction with the construction of a 50.8 mile long two-lane highway from the end of Glacier Highway at Echo Cove around Berners Bay, and along the eastern coast of Lynn Canal to a point immediately north of the Katzehin River delta, with associated infrastructure:

<b>Facilities</b>	<b>Acres of US Waters To Be Filled</b>		<b>Fill Volume</b>	
Roadway Fill	44.4	Acres	1,173,514	Cubic Yards
Roadway Slope Stabilization	17.5	Acres	0	Cubic Yards
Channel Work	1.3	Acres	5,475	Cubic Yards
Roadway Marine Fill	25.6	Acres		See Below
Marine Rock Disposal	14.8	Acres	430,000	Cubic Yards
Ferry Terminal	3.8	Acres	75,600	Cubic Yards
<u>Ferry Breakwaters</u>	<u>2.7</u>	<u>Acres</u>	<u>51,000</u>	<u>Cubic Yards</u>
TOTAL	110.2	Acres	1,735,589	Cubic Yards

**Roadway Fill:** Approximately 61.9 acres (44.4 acres of roadway in freshwater wetlands plus 17.5 acres of side slope stabilization in wetlands) will have rock fill placed within the prepared site.

**Channel Work:** The installation of 445 new culverts and the extension of 19 culverts will require the discharge of approximately 5,475 cy of bedding, rip rap, and concrete into approximately 1.3 acres of waters of the U.S. below the ordinary high water mark of streams. The culverts will typically be placed in a bedding footprint of 1.5 feet on either side of the pipe, with approximately 1.5 feet of bedding below and above the pipe. Pipe alignments and gradients will match the natural stream beds except where excavation or excessive skew make this impracticable. The culverts will be installed by temporary diversion, by either pumping water around the site or by diverting the water through a temporary lined channel.

**Marine Roadway Fill:** The road will be placed, for part of its length along the shoreline, in approximately 25.6 acres of marine (tidal) waters along the east side of Lynn Canal, north of Comet Beach. The road, which will be composed of shot rock fill, will be protected at its base with 6 feet of Class IV rock riprap extending up to elevation +24 feet above the 0.0 foot contour. The marine roadway fill portion was included with in the roadway fill volume.

**Marine Rock Disposal:** Approximately 430,000 cy of rock shall be barged and disposed of at one of two designated open-water disposal sites in marine waters in the following locations: (A & B) Section 25, Township 33 South, Range 61, Copper River Meridian; and (C & D) Section 30, Township 32 South, Range 61 East, Copper River Meridian. The two disposal sites encompass a total of 14.8 acres.

Ferry Terminal: The placement of approximately 75,600 cy of fill material for a marine terminal into 3.8 acres of marine waters of the U.S.

Ferry Breakwaters: The placement of approximately 51,000 cy of fill material for two breakwaters into 2.7 acres of marine waters of the U.S.

Terminal Facility: Dredge approximately 40,000 cy of marine sediment from a 4.4-acre area to the minus 25-foot contour for a mooring basin. The dredged material would be used for the ferry terminal fill area and would be contained behind a six-foot thick layer of rock riprap.

All work will be performed in accordance with the attached plans, sheets [1-103], dated Dec 2005, February 2006, September 2006, and May 2007.

**Project Location:** The project starts on the existing Glacier Highway in the SW ¼, NE ¼ of Section 18, Township 37 South, Range 64 West, Latitude 58.663344° North, Longitude 134.903281° West, in the City and Borough of Juneau, Alaska. The road shall continue north and west 50.8 miles, partially following the existing alignment of the Cascade Point Road, and the Jualin Mine Access Road, and ending at the proposed ferry terminal to be located just north of the mouth of the Katzehin River delta. The ferry terminal will be located in the NW ¼, SW ¼ of Section 33, Township 30 South, Range 60 East, Latitude 59.227191° North, Longitude 135.327309° West, in the Haines Borough, Alaska.

**Permit Conditions:**

**General Conditions:**

1. The time limit for completing the work authorized ends on **June 30, 2013**. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

**Special Conditions:**

1. Your use of the permitted activity must not interfere with the public's right to free navigation on all navigable waters of the United States.

2. You must install and maintain, at your expense, any safety lights and signals prescribed by the United States Coast Guard (USCG), through regulations or otherwise, on your authorized facilities. The USCG may be reached at the following address and telephone number: Commander (dpw), 17th Coast Guard District, P.O. Box 25517, Juneau, Alaska 99802; (907) 463-2272.

3. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

4. In-Lieu-Fee Compensatory Mitigation:

a. The permittee shall pay the sum of \$440,000 as In-Lieu Fee (ILF) for wetland restoration, enhancement, preservation or land acquisition for the unavoidable adverse impacts to fresh water aquatic resources. This compensatory mitigation amount of \$440,000 is based on June 2006 dollars and shall be adjusted for the rate of inflation to the year in which payment is made to the ILF operator. The method for determining inflation shall be the same as those used by FHWA to determine project costs.

b. The permittee shall pay the sum of \$780,000 as an ILF to offset for the loss of 32.0 acres of unavoidable adverse impacts to intertidal and subtidal marine waters (EFH) of the United States. The \$780,000 is compensatory mitigation required under Section 404 of the Clean Water Act. This compensatory mitigation amount of \$780,000 is based on June 2006 dollars and shall be adjusted for the rate of inflation to the year in which payment is made. The method for determining inflation shall be the same as those used by FHWA to determine project costs.

c. Therefore, the total ILF amount required under Section 404 of the Clean Water Act for the Project is found in two parts: (4a: \$440,000) + (4b: \$780,000) = \$1,220,000.

d. Total payment to the ILF operator shall be made for special condition 4a prior to any construction. Construction is defined as ground breaking or land clearing activity with heavy equipment, the placement of fill material in waters of the U.S. or work within waters of the U.S.

e. Payment or fund expenditures for special condition 4b shall be made in accordance with the Essential Fish Habitat mitigation plan, found in the document, *"Mitigation Commitments Relevant to Section 404 of the Clean Water Act."*

f. If project modifications result in a footprint increase in low-value fresh water jurisdictional wetlands and the footprint increase is less than five acres, an ILF increase is not required. If the jurisdictional low-value wetland fill footprint exceeds 66.9 acres (61.9 + 5.0 = 66.9 acres) for the project, the amount of additional mitigation shall be determined independently, and shall be in addition to the amount in special condition 4a (\$440,000).

g. If project modifications result in a footprint increase impacting marine or high-value jurisdictional habitat areas, the amount of additional mitigation shall be determined independently, and shall be in addition to the amount in special condition 4b (\$780,000).

h. If project modifications are requested by ADOT an approved DA permit shall be in hand prior to placing fill or structures in jurisdictional waters of the U.S. A permit modification is required if the plans vary from those permitted by the DA. Special Conditions 4a through 4g address mitigation requirements not DA permit requirements.

5. All anadromous fish streams will be crossed by bridges. Streams that can be crossed with 130-foot or shorter bridges will not have any structures or fill placed below the ordinary high water mark of the stream channel.

6. Permittee shall coordinate with the U.S. Fish & Wildlife Service (USFWS) to avoid impacts on eagle nesting trees, in accordance with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. Permittee shall also abide by the National Bald Eagle Management Guidelines at <http://www.fws.gov/migratorybirds/baldeagle.htm>.
7. No in-water work is permitted between April 15 and June 15 in anadromous waters. Marine water work can only occur if there is a complete tide out event during this window.
8. No fill material shall be side cast into Berners Bay during construction.
9. The Measures to Minimize Harm identified in the April 3, 2006, Federal Highway Administration's Record of Decision for the Project shall be incorporated as elements of the project. If there is any conflict between FHWA's Measures to Minimize Harm and conditions of DA permit, the conditions of the DA permit shall be controlling.
10. The permittee will continue to fund the U.S. Fish & Wildlife Service's aerial surveys for a period of five years after all construction is completed to assess the impact, if any, of the project on the Lynn Canal bald eagle population.
11. Permittee shall construct the proposed bridges for the Antler and Lace Rivers so as to avoid placing fill material in any contiguous wetlands.
12. For project segments not yet fully designed, the permittee shall submit to the Corps, for review and approval, detailed plan sheets that reflect the contract plans and specifications for all work involving fill placement in waters of the United States, including wetlands. The submission shall be at least 30 days prior to contract advertisement and at least 90 days prior to initiation of construction, whichever provides a greater review period. "Construction," as used here, is defined as groundbreaking or land-clearing activity with heavy equipment, or the placement of fill material within 50 feet of waters of the United States. Plans sheets and any accompanying specifications shall delineate all fill footprints in waters of the U. S., including wetlands and provide site-specific details on the fill quantities, fill footprints and construction methods (e.g. culvert installation in streams for road crossings) in sufficient detail for permit compliance inspections by the Corps. The permittee shall demonstrate how the Department of the Army permit conditions and authorization has been incorporated into the plans and specifications. Submittals from the applicant, and or approvals from the Corps may be completed in multiple phases.
13. The permittee shall notify the Corps, in writing, at least 30 days prior to the proposed construction of any offsite disposal areas associated with this project and shall submit a preliminary jurisdictional determination to the Corps for verification no waters of the U.S., including wetlands are involved. Construction of the new waste sites shall not commence until the Corps has determined in writing, that the disposal sites and methods of disposal do not require additional Corps authorization.
14. The permittee shall delineate by staking, flagging and/or marking with other observable methods the construction area limits prior to commencing construction in each area. The permittee shall notify the Corps, in writing, a minimum of 14 days before construction in each area, of the date when staking of that area will be available for Corps inspection. The permittee shall arrange for an inspection of the delineated limits with the Corps. The delineated limits shall be maintained throughout construction to prevent equipment encroachment and/or fill material placement beyond the project-authorized footprint.
15. A pre-construction meeting shall be held between the permittee, the Corps, and the prime contractor(s) whose work is subject to this permit, at least 14 days prior to construction activities, placement of fill material, in waters of the U. S., including wetlands. A minimum notice of a ten working days shall be provided to the Corps. The purpose of the meeting shall be to discuss the work authorized under this permit and the environmental mitigation measures required for compliance, in addition to serving as a forum for open discussion on the above, to identify problem areas, and to answer questions that attendees may have. The permittee shall insure that all contractors and workers whose work is subject to this permit are advised of its terms and conditions. All contractors whose work is subject to this permit shall be given a copy of this permit and required to keep a copy on-site.

16. Construction activities in wetland areas shall be kept to a minimum and shall not exceed the clearing limits. Vehicles traversing wetlands shall be confined to the minimum corridor necessary to conduct the work. Heavy equipment operating in wetlands outside the fill footprint shall be operated on mats of sufficient size and material(s) to minimize soil disturbances, and to allow complete removal of the mats without further soil disturbances after construction.

17. 'Certified' seed mixtures shall be used where seeding is required for erosion control and/or revegetation. Seed collection may be made from the surrounding or regional area for revegetation purposes but not for short-term erosion control purposes. The purpose of the use of certified seed mixtures is to ensure that a high standard of pure live seed is utilized, and to avoid or minimize the contamination of the seed mixture with noxious weed and/or weed seed.

18. All road cut and fill areas, and waste material disposal sites shall be limited to the minimum required to complete the work and shall be properly stabilized concurrently with material placement to prevent sediment-laden runoff from entering natural surface waters.

19. The permittee shall implement and maintain effective erosion and sediment control measures before, during, and after construction. Filled wetland areas shall be aggressively monitored and maintained to prevent erosion and sediment from entering water bodies.

20. All filled areas in stream corridors shall be treated for revegetation within 30 days of completion of road-stream crossings and within the growing season in which the construction occurs. If construction of a stream crossing is completed after the growing season, the disturbed stream banks shall be stabilized by other means for the winter and revegetation treatments shall occur at the beginning of the following growing season. At the end of one full growing season, live vegetative cover shall be equal to or greater than 25 percent of the surrounding undisturbed live vegetative cover density and 75 percent after three years.

21. Natural wetland drainage and inundation patterns shall be maintained through the incorporation of adequately sized (diameter and length), sloped and spaced culverts and/or bridges. The permittee shall be responsible for annual monitoring, maintenance, and/or repair, and/or replacement of all culverts and bridges for the life of the project to insure that natural wetland drainages and inundation patterns are maintained. Upslope ponding shall be considered an indicator of non-compliance with this condition.

22. All culverts and bridges shall be designed, installed, and maintained so they do not interfere with free and unobstructed passage of all life stages of fish (both anadromous and resident) present in the stream under reasonably expected flow levels. In addition, the culverts shall be placed in and aligned with the natural stream channel and hydraulic gradient.

23. Gravel and streambed material shall be used in the bottoms of fish-passage culverts.

24. Temporary fills in wetlands shall be placed on geotextile mats or other suitable materials of sufficient thickness to facilitate the removal of the fill material to the maximum extent practicable when it is no longer needed for construction. No natural earthen material shall be removed from under the geotextile mat when the temporary fill is removed.

25. All construction in anadromous fish streams shall take place when stream disturbances would have the least impact on anadromous fish species. All in-water anadromous fish stream construction activities shall be coordinated with the Alaska Department of Natural Resources, Habitat Division. Construction work that occurs above the ordinary high water mark area of the stream and does not include in-water construction may be conducted throughout the year.

26. In-water work areas, except for stream crossings by construction equipment and pile driving, shall be isolated from flowing waters in all fish bearing streams.

27. Permittee shall work with the communities of Juneau, Haines, and Skagway to develop, to the extent practicable, a beneficial use for the estimated 0.4 million cy of waste rock that would otherwise be discharged into marine waters. The permittee's "Beneficial Use Evaluation" shall include, but is not limited to, the construction of artificial reef habitat in Lynn Canal.

28. During pile driving activities in the Lynn Canal, the Chilkoot Inlet and Berners Bay, a vibratory hammer and/or a reverse rotary drill shall be used to the extent practicable. If impact hammers are needed to drive steel piles, NMFS shall first be provided with a description of why vibratory hammers cannot be used. Driving near-shore pilings shall occur only during periods of low tides when the site is dewatered.

29. Riprap shall be placed along stream banks as necessary to maintain stream bank integrity, and shall in fish bearing streams include the use of bioengineering techniques to improve habitat value of the riprap, such as incorporation of willow stakes or other locally available vegetation.

30. A copy of an as-built survey shall be provided to the Corps for all fills (roads, pads, etc) placed in waters of the U.S., including wetlands, as well as culverts and bridges over freshwater streams each year after implementation of the work authorized by this permit, and upon completion of the project, a final as-built survey shall be submitted within one year, or within one month from the date of surveys required for other Federal or state offices, whichever is earlier.

31. All conditions and agreements found in the National Marine Fisheries Service September 27, 2005, Endangered Species Act Section 7 consultation letter shall be followed by ADOT and its contractors.

32. The applicant shall supply a yearly update to the Corps of Engineers on mitigation work completed and in lieu payments made according to the *Essential Fish Habitat mitigation plan, found in the document "Mitigation Commitments Relevant to Section 404 of the Clean Water Act."*

**Further Information:**

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

(X) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).

(X) Section 404 of the Clean Water Act (33 U.S.C. 1344).

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, State, or local authorization required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

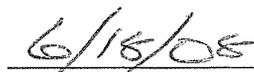
Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

  
\_\_\_\_\_  
(PERMITTEE) AND TITLE

  
\_\_\_\_\_  
(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

  
\_\_\_\_\_  
COL KEVIN J. WILSON  
DISTRICT COMMANDER  
U.S. ARMY COPRS OF ENGINEERS

  
\_\_\_\_\_  
(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions have the transferee sign and date below.

\_\_\_\_\_  
(TRANSFEREE)

\_\_\_\_\_  
(DATE)